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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,917	12/09/2003	Jean-Francois Delage	117877	3312

25944 7590 10/06/2005
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EXAMINER

WALCZAK, DAVID J

ART UNIT PAPER NUMBER

3751

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/729,917	Applicant(s) DELAGE, JEAN-FRANCOIS	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 and 25-27 is/are allowed.
- 6) ☒ Claim(s) 22-24 and 28-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23, 24 and 31 remain rejected under 35 U.S.C. 102(b) as being anticipated by EPO 506 564 A1 (as cited by Applicant, hereinafter '564). In regard to claims 23 and 24, Figure 4 of '564 discloses an applicator comprising of handle 1' having an axis, a retainer 8' secured to the handle, an applicator ball 9' rotatably mounted in the retainer and a helical spring 12' connecting the handle to the retainer wherein the spring allows the retainer to depart from the axis during application, i.e., viewing Figure 4, a handle axis runs parallel to wall 2' and the retainer, which moves in a direction perpendicular to said axis will "depart from the axis" during application. In regard to claim 31, the method as claimed is inherent in the operation of the '564 reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22, 28-30, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over '564 in view of Le Moing. In regard to claims 22 and 28, although the '564 reference discloses a spring and not a foam link element, attention is directed to the Le Moing reference, which discloses another applicator wherein it is disclosed that the helical spring 40 can be replaced with a foam element 41 (see column 10, lines 64-67). Accordingly, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the helical spring in the '564 device can be replaced with a foam spring wherein such a modification would amount to the mere substitution of one functionally equivalent spring for another and the selection of either spring element would work equally well on the '564 device. In regard to claims 29, 30, 32 and 33, although the '564 reference does not disclose the type of product being dispensed, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the '564 device can be used to dispense any suitable product, including a cosmetic, without effecting the overall operation of the device.

Allowable Subject Matter

Claims 1-21 and 25-27 are allowed.

Response to Arguments

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Applicant's arguments filed 8/26/05 have been fully considered but they are not persuasive. In regard to claim 22, the Applicant seasonably challenges the Examiner's rejection that any suitable material can be used for the spring element, including foam without effecting the overall operation of the device (this rejection effectively being an "official notice" rejection that foam springs are commonly employed and are interchangeable with coil springs). Accordingly, the Examiner has provided evidence that helical springs and foam springs are interchangeable in applicator elements, as asserted in the previous office action. The Applicant further states that replacing the spring 12' in the '564 device with a foam spring would render the device inoperable as the foam would close the duct, however, as shown in the Le Moing reference, a foam spring having an opening therethrough could be employed onto the '564 device so as not to impede the flow of product. In regard to claim 23, the Applicant contends that the '564 reference is not applicable since the retainer does not depart from the axis. As discussed supra, however, depending on the axis chosen, the retainer may or may not depart therefrom.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
10/3/05